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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,723	02/11/2004	Scott D. Trunecek	61538	2834
24230	7590	01/25/2005	EXAMINER	
HARSHAW RESEARCH INCORPORATED P O BOX 418 OTTAWA, KS 66067			COLE, LAURA C	
		ART UNIT	PAPER NUMBER	
		1744		
DATE MAILED: 01/25/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/776,723	TRUNECEK, SCOTT D.
Examiner	Art Unit	
Laura C Cole	1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 11 February 2004.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-18 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-5 and 7-18 is/are rejected.

7)  Claim(s) 6 is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 11 February 2004 is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 02112004.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 7, 11, and 13-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 7, Line 4 recites “said intermediate space being a *vacuum*” which is unclear to the Examiner. What is meant by “vacuum”?

Claim 11, Lines 1-2 recite that the “body portion includes an *ergonomic* configuration.” It is unclear to the Examiner what the Applicant defines an “ergonomic configuration” to be.

Claim 13, Line 4 recites “said intermediate space being a *vacuum*” which is unclear to the Examiner. What is meant by “vacuum”?

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3-5, 9, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Hammond, USPN 2,511,161.

Hammond discloses the claimed invention including a body portion (12) defining a chamber (19), a blade portion (21) connected to the body portion (see Figure 2) and defining an interior space (24) in communication with the chamber (see Figure 2), the blade portion having at least one peripheral edge (22), and heatable material positioned within the chamber (20) for storing thermal energy. The body portion and blade portion include a monolithic construction (see Figure 2). The heatable material has a conductive element (29) that is sandwiched between the body and blade portions (see Figure 2) The body portion and the blade portion are releasably connected (via screws 25, 26) the conductive element is in communication with the heatable material (see Figure 2), the conductive element (29) is situated proximate to at least one outside surface (the bottom surface) of the blade edge (see configuration in Figure 2), and the conductive element is of a highly conductive metal (Column 2 Lines 40-43). The handle appears to have an "ergonomic" configuration (see shaped handle in Figure 1).

3. Claims 1, 3, 7, 9, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Hopkins, USPN 4,719,660.

Hopkins discloses the claimed invention including a body portion (34, 36) defining a chamber (see hollow cross section in Figure 2), a blade portion (14) connected to the body portion (see Figures 2-4) and defining an interior space (32) in communication with the chamber (see Figures 2-3), the blade portion having at least one peripheral edge (23), and heatable material positioned within the chamber (the air surrounding element "50", Column 3 Lines 47-50) for storing thermal energy. The body portion and blade portion include a monolithic construction (see Figures). The body

portion includes outer wall(s) (34, 36) and an inner wall (any of the upstanding vertical walls that extend from 36, see Figure 2) that is spaced apart from the outer wall to define an intermediate space there between being a "vacuum" (see Figure 2). The body portion is releasably connected to the blade portion (by interference fit, see Abstract). The body portion includes an "ergonomic" configuration (the handle appears to be shaped in the Figures).

4. Claims 1, 3, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Kim, USPN 5,357,646.

Kim discloses the claimed invention including a body portion (11) defining a chamber (see hollow indications by hatched lines in Figure 3), a blade portion (13) connected to the body portion (see Figures 1-3) and defining an interior space (the space wherein the wire "15" is embedded) in communication with the chamber (by the space housing the wire), the blade portion having at least one peripheral edge (14), and heatable material positioned within the chamber (15) for storing thermal energy. The body portion and blade portion include a monolithic construction (see Figures). The body portion includes an "ergonomic" configuration (the handle is rounded, see Figures).

5. Claims 1-3 and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Virkler, USPN 5,837,296.

Virkler discloses the claimed invention including a body portion (22) defining a chamber (see Figures 2-5), a blade portion (20) connected to the body portion (see Figures) and defining an interior space (the space inside the bladed scoop "20") in

communication with the chamber (see Figures), the blade portion having at least one peripheral edge (the scooping edges, angular pointed portions in Figures 2 and 3), and heatable material positioned within the chamber (warm tap water, Column 2 Lines 36-40, 45-62) for storing thermal energy. The heatable material includes a microwavable gel (the gel being the water which is microwavable). The body portion and blade portion include a monolithic construction (see Figures). The blade portion includes a configuration that is round (the scoop is round, see Figures). The body portion includes an "ergonomic" configuration (in that the body is rounded, see Figures). The heatable material includes a moist substance that includes water (see Abstract).

6. Claims 1, 3, 4, 7, and 10-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Shultz, USPN 2,171,606.

Shultz discloses the claimed invention including a body portion (2) defining a chamber (5); a blade portion (3, 7) connected to the body portion (see Figures) and defining an interior space (13, 14") in communication with the chamber (see Figures), the blade portion having at least one peripheral edge (8), and heatable material positioned within the chamber (Page 1 Column 2 Lines 43-49 and Page 2 Column 1 Lines 17-42) for storing thermal energy. The body portion and blade portion include a monolithic construction (see Figures). The heatable material acts as a conductive element and is sandwiched between the body and blades, or portion "12" may be considered a conductive element as it aids in the heating/cooling of the liquid (Page 1 Column 2 Lines 34-42 and Page 2 Column 1 Lines 17-42). The body portion includes an outer wall (see outer shell where numerals 1 and 4 are pointing in Figure 1) and an

inner wall (12) spaced apart from the outer wall to define an intermediate space. The blade has a round configuration (see Figures). The body portion includes an "ergonomic" configuration (in that the body is rounded, see Figures).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hammond, USPN 2,511,161.

Hammond discloses all elements above and further includes a body portion that has an outer wall (see outer edge of "12" in Figure 2) and an inner wall spaced apart from the outer wall (the inner portion of "12" that faces "19", see Figure 2), and that the space between the inner wall and outer wall is an insulating material (Column 1 Lines 35-37). Hammond is constructed of a solid insulating body portion, and is not constructed as a shell having outer and inner walls having a space to be filled, so

therefore Hammond does not include an intermediate space between the outer wall and inner wall. Both the solid insulating body portion and inner and outer walls filled with insulating material accomplish the same result, to provide insulation to the hand of a user from the heated material.

It would have been obvious for one of ordinary skill in the art to modify the inner and outer walls of the insulating body portion of Hammond to have an inner space having insulating material as an obvious matter of design choice within the level of skill in the art.

***Allowable Subject Matter***

8. Claim 6 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. Claims 13-18 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

10. The following is a statement of reasons for the indication of allowable subject matter:

None of the prior art made of record includes an ice scraping apparatus having a combination of a body portion having a chamber, a blade portion connected to the body portion and having an interior space in communication with the chamber, the blade portion having a peripheral edge, a heatable material positioned in the chamber, a conductive element sandwiched between the body and blade portions, the conductive

element being in communication with the heatable material, and the conductive element extends beyond at least one peripheral blade edge to form a scraping blade. USPN 5,369,257 includes a blade edge of a heatable material including microwavable gel, however does not include a body portion having a chamber or a blade portion having an interior space in communication with the chamber, with the heatable material positioned in the chamber and a conductive element.

None of the prior art made of record includes an ice scraping apparatus having a combination of a body portion having a chamber, a blade portion connected to the body portion and having an interior space in communication with the chamber, the blade portion having a peripheral edge, a heatable material positioned in the chamber, the heatable material including a moist substance that contains some water, and an outer wall and inner wall spaced apart from the outer wall so as to define an intermediate space there between, the space being a "vacuum."

The document [http://www.shopsolution.co.uk/gemstore/detail.asp?prod\\_ID=111](http://www.shopsolution.co.uk/gemstore/detail.asp?prod_ID=111) discloses an ice scraper that one would warm in a microwave or by submerging in hot water to keep your hands warm and to clean a window. It is not clear as to whether the body portion or blade portion have a chamber or interior space or if there is a material positioned within the chamber.

### ***Conclusion***

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C Cole whose telephone number is (571) 272-

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1272. The examiner can normally be reached on Monday-Thursday, 7:30am - 5pm, alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J Warden can be reached on (571) 272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LCC  
LCC  
21 January 2005

  
ROBERT J. WARDEN, SR.  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700